



## ***Land Use and Zoning Meeting Minutes***

*February 18, 2010*

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| STAFF:       | David Radachy     |
| DATE:        | February 18, 2010 |
| APPROVED BY: | <i>ju3</i>        |

The Land Use and Zoning Committee hereby finds and determines that all formal actions were taken in an open meeting and that all deliberations of the Land Use and Zoning Committee, which resulted in formal action, were taken in a meeting open to the general public, in full compliance with applicable legal requirements of Section 121.22 of the Ohio Revised Code.

The meeting was called to order at 6:28 p.m. by Chairman Terriaco.

Attendance was taken by sign in sheet. The following members were present: Messrs., Bodnar, Klco, Kenyon, Terriaco and Welch, and Mmes. Ross and Diak. Staff: David Radachy.

Mr. Terriaco asked for any comments from the public. No comments were made.

Mr. Terriaco asked Mr. Radachy to present the cases. There were six cases.

### **Leroy Township – Text Change to Section 2, Definitions**

Staff stated that the Leroy Township Zoning Commission was adding definitions of common drive, flag lot, residential site plan, site development plan, cul-de-sac bulb lot, cul-de-sac permanent, cul-de-sac temporary, decibels, decommissioning plan, FAA, intra-project power lines, small wind farm, small wind energy system, solar energy commercial operations, solar panel, wind energy system, wind tower, wind tower height, and wind turbine.

Several of these definitions were being added because Leroy Township was adding alternative energy regulations. Staff also stated that several of these definitions came from the Lake County Subdivision Regulations and other local township zoning resolutions.

Staff recommended that the changes be made. He also stated that the sentence, "The construction of the street shall conform to rules, regulations, and standards specifications for road improvements in accordance with ORC 711.101, these regulations and applicable zoning", be deleted from the cul-de-sac permanent and cul-de-sac temporary definitions. He stated that the cul-de-sac definitions were taken from the Lake County Subdivision Regulations. ORC 711.101 gives the County the right to obtain a construction surety to guarantee the construction of roads and gives the County the ability to set specifications for the roads and other improvements. This is not a zoning issue.

The Committee had questions about several other definitions. They questioned whether the term "vacated" be used in the place of "removed" in the temporary cul-de-sac definition. Staff stated that vacated is when an easement or right-of-way is no longer needed and the party gives up their right to it. Removed means the pavement is being taken out. It was better to use removed.

The Committee stated that definition of Intra-project Power Lines did not make sense. The definition makes it sound like the solar panels must be buried. Staff stated that the language needed to be addressed and suggested deleting "must be buried". This would create a proper definition. The committee also suggested deleting "it" from the second line of the small wind energy system definition.

Mr. Welch made a motion to accept the staff's recommendation and the recommendations from the committee that the definitions be added with edits.  
Ms. Diak seconded the motion.

All voted "Aye".  
Motion passed.

### **Leroy Township – Text Change addition of new Section 33, Alternative Energy**

Staff stated that the Leroy Township Zoning Commission initiated this zoning text change. They are adding rules for placement of Small Wind Farm and Solar Panel as an Accessory Use. He also stated that ORC 519.213 states the ORC confers on a Township the right to adopt rules or regulations for small wind turbines under 5 mega watts that may be more strict than rules under ORC 4906.20 (B)(2).

Staff stated that they were concerned with the regulation of "the amount of electricity to service a house may differ from house to house and may change over time as the family changes." The requirement of the amount of electricity produced may not exceed the amount required to service the private use of the subject property and may be difficult to enforce or monitor. While they had concerns about it, staff did not recommend any changes or removing it.

Staff suggested adding language stating that no part of the structure, including guy wire anchors, may extend closer than 20 feet to the right-of-way line. Staff stated that the regulation did have a requirement that no part of the system, including the anchor wires, could be closer than 20 feet to a property line and you could interpret the right-of-way line as the property line, but it would be better to state it and not open the door to interpretation.

The Committee noted that the abbreviation for decibels in 33.04A A 8 did not correspond to the definitions. It should be dB not dBA. The Committee also asked why you could not place a system on a vacant piece of property and responded by saying the regulations define it as an accessory use and you need a main structure in order to do an accessory use.

Mr. Welch made a motion to recommend the text change with staff's and the Committee's text suggestions.  
Ms. Diak seconded the motion.

All voted "Aye".  
Motion passed.

### **Leroy Township – Text Change to Sections 15, 16 and 23**

Staff stated that the Leroy Township Zoning Commission was adding Small Wind Farm and Solar Panel as an Accessory Use in R-1 (Section 15.04) and R-2 (Section 16.04). They were also adding minimum owner identification sign square footage and maximum owner identification sign posting height requirements for wind towers, buildings or other structures to Section 23.03. The owner identification signs were created in Section 33. New regulations had to be developed in Section 23, Signs.

Staff recommended that the text amendment be accepted.

Mr. Welch made a motion to recommend the text change.  
Ms. Diak seconded the motion.

All voted "Aye".  
Motion passed.

### **Madison Township – Text Change, Addition of Section 130.10, Wind Turbines**

Staff stated that the Madison Township Zoning Commission initiated this zoning text change. They are adding rules for placement of wind turbines as an Accessory Use. He also stated that ORC 519.213 confers on a township the right to adopt rules or regulations for small wind turbines under 5 megawatts that may be more strict than rules under ORC 4906.20 (B)(2). These uses were not addressed by the Madison Township Comprehensive Plan, but visual impact of above ground wires were addressed.

Staff stated that Madison Township is also going through the process of adding regulations for small wind farms, which was the second case tonight. Their regulations also addressed setbacks from overhead utilities, noise, signs, lighting and requiring connection wires to be underground.

Staff stated that they were concerned about the Township's legal obligation in regards to requiring proof of insurance. Staff was worried about the Township being added to a lawsuit if a tower were to collapse and the owner has allowed the insurance to expire. Mr. Klco stated that they received a legal opinion that they should require it. Other members of the committee stated that the more items required to be submitted, the greater chances of something being overlooked and not submitted.

Staff recommended that this text change be resubmitted. Staff suggested the following text changes:

- They suggested that the township use the term small wind farm instead of wind turbines. This will be more consistent with ORC 519.213.
- List the districts that this is allowable or add this as an accessory use to the districts that you wish to allow this use.
- There should be a setback from overhead utility lines or wires such as, but not limited to, high tension electrical wires, cable, and telephone.
- Have your legal counsel review requiring proof of insurance.
- Add language requiring wires connecting the small wind farms to the grid to be underground.
- Add language prohibiting signs to be allowed on the tower.
- The township should allow for owner identification size and warning signs, but they should limit the size and location of owner identification signs.
- Add language to address the maximum decibels a wind farm can produce.
- Add language to limit the amount of lighting that can trespass onto the neighboring properties.
- Require a decommissioning plan.

Staff stated that they would be willing to assist in writing these regulations.

Mr. Klco stated the regulations require a tower to be taken down within six months after notice has been given if it is not in use. He asked if that was the same as a decommissioning plan. Staff stated no, a decommissioning plan is how the tower is to be removed.

Ms. Ross made a motion to recommend the text change with staff's text suggestions.  
Mr. Bodnar seconded the motion.

All voted "Aye".  
Motion passed.

### **Madison Township – Text Change of the Fee Schedule Resolution**

Staff stated that this amendment will add a fee for site plan review and remove the fee for political signs. The fee schedule is not required to be part of the zoning resolution. The item that is required to be part of the zoning resolution is the fact the Township requires a fee for a zoning permit. Removing the fee schedule from the resolution will also remove the requirement to have a public hearing when the fee schedule is revised. Removing the fee for political signs will cause other changes to other sections of the zoning resolution.

Staff recommended removing the fee. He also recommended removing the language "...and made a part of this Resolution" from section 140.3.1, Zoning Fees. This would eliminate the requirement of a public hearing when the fees are revised. Also, the fee is also listed in section 128.9.10. It also needs to be removed.

The Committee asked why Madison Township was removing the fee. Mr. Klco stated that the fee needed to be returned after the election. Staff stated that there were court cases and legal opinions recommending this change. Other committee members stated it was a freedom of speech issue and the fee was not constitutional.

Mr. Welch made a motion to recommend the text change with staff's text suggestions.  
Mr. Kenyon seconded the motion.

All voted "Aye".  
Motion passed.

### **Madison Township – Text Change, Addition of Section 123, Riparian Setbacks**

Staff stated that the Madison Township Zoning Commission was adding rules for placement of building setback along streams, rivers and wetlands in Madison Township. These new setbacks would be:

- 200 feet from a water course that drains an area greater than 20 square miles.
- 100 feet from a water course that drains an area greater than ½ square mile and less than 20 square miles.
- 50 feet from any water course that drains less than ½ square mile.
- 50 feet from any category 3 wetland, 30 feet from any category 2 wetland and 10 feet from any category 1 wetland.

Staff also stated that it was a recommendation of the Madison Township Comprehensive Plan. (NR-1p7): Establish a minimum riparian setback requirement for properties adjacent to or near waterways, streams, wetlands and floodplains. Perry Township and Leroy Township have established riparian setbacks in their zoning resolutions. This language is based on the Chagrin River Partners model riparian setback ordinance.

Staff had some concerns with the language. FEMA has changed their terms in regards to floodplains. It is no longer "100 year floodplain"; FEMA refers to it as "1% Annual Chance Floodplain". How do the new riparian setbacks and S-1 district interact?

Staff recommended the text changes in this amendment. They made the following suggestions:

- The regulations need to be put into the Madison Township Zoning Resolution format. For example, section I Title would become 123.1 Title.
- All references to other sections must be checked to make sure they are correct and make sure all extra text is removed.
- In the definition section, the definition for "Madison" means Madison Township. There is language where the term "Township" is used instead of the term "Madison". Township is not defined. Either define it or change it to Madison.
- Make sure that the S-1 district requirements and the riparian setbacks do not contradict each other.
- The setbacks shown on the graphic example do not conform to the requirements in the regulations. The regulations state there should be a 100-foot setback on a stream draining area between ½ square mile and 20 square miles and the drawing is showing a 75 foot setback on stream draining an area of greater than 1 square mile to 20 square miles.
- Work with LCSWCD to prepare the guidance map.

The Committee asked how the drainage area was determined. They were told that it was determined by the watershed and the guidance map will help with this determination.

Mr. Welch made a motion to recommend the text change with staff's text suggestions.  
Mr. Klco seconded the motion.

All voted "Aye".  
Motion passed.

Mr. Terriaco asked if there was any new business.

Staff stated that there were additions to the Organization and Procedures for the Committee. We have added duties of the officers and vacancy was addressed. Mr. Terriaco asked if any action needed to be taken, staff stated no.

Staff stated that a new member was recommended by Perry Township. The recommendation came after the last Planning Commission Meeting, so the Chair had not had a chance to sign the letter officially appointing that member. Hopefully that will be done before the next meeting.

Mr. Terriaco asked if there was any old business.

There was none.

Mr. Terriaco asked if there was any public comment for the second public comment. There was no comment. There was also a reporter from the Gazette.

The meeting was adjourned at 6:58 P.M.